

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Andres Gomez,

Plaintiff,

v.

NV AWG, Ltd., a Nevada
Corporation;

Defendants.

Case No.

**Complaint for Damages and
Injunctive Relief for Violations
of: American's With Disabilities
Act; Unruh Civil Rights Act**

**NOT RELATING TO A
CONSTRUCTION-RELATED
BARRIER AS DEFINED IN CAL.
CIV. CODE § 55.3**

Plaintiff Andres Gomez ("Plaintiff") complains of NV AWG, Ltd., a
Nevada Corporation ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a visually-impaired individual and a member of a protected
class of persons under the Americans with Disabilities Act. Plaintiff uses as
Talkback or similar software to navigate websites and applications on

1 electronic devices. Plaintiff is legally blind¹ and cannot use a electronic device
2 without assistance of screen-reader software (“SRS”)

3 2. Defendant NV AWG, Ltd. (“Andretti Winery ”), owned or operated
4 Andretti Winery located in Napa County, California, in March 2021 and
5 August 2021.

6 3. Defendant NV AWG, Ltd. owns or operates Andretti Winery located in
7 Napa County, California, currently.

8 4. Defendant NV AWG, Ltd. owned or operated the Andretti Winery
9 website, with a root domain of: <https://andrettiwinery.com/>, and all related
10 domains, sub-domains and/or content contained within it, (“Website”) in
11 March 2021 and August 2021.

12 5. Defendant NV AWG, Ltd. owns or operates the Andretti Winery’s
13 Website currently.

14 6. Plaintiff does not know the true names of Defendants, their business
15 capacities, their ownership connection to the property and business, or their
16 relative responsibilities in causing the access violations herein complained of,
17 and alleges a joint venture and common enterprise by all such Defendants.
18 Plaintiff is informed and believes that each of the Defendants herein, is
19 responsible in some capacity for the events herein alleged or is a necessary
20 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
21 the true names, capacities, connections, and responsibilities of the Defendants
22 are ascertained.

23
24 **JURISDICTION & VENUE:**

25
26 ¹ Plaintiff uses the terms “visually-impaired” or “blind” interchangeably to
27 refer to individuals, including himself, who meet the legal definition of
28 blindness. (visual acuity of 20/200 or worse.) Some individuals who meet
these criteria have no vision, others have limited vision.

1 7. The Court has subject matter jurisdiction over the action pursuant to 28
2 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
3 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (“ADA”)

4 8. This court has supplemental jurisdiction over Plaintiff’s non-federal
5 claims pursuant to 28 U.S.C. § 1367 because Plaintiff’s Unruh claims are
6 formed from the same case and/or controversy and are related to Plaintiff’s
7 ADA claims. A violation of the ADA is a violation of Unruh. (Cal. Code §51(f).

8 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b). Defendant
9 is subject to personal jurisdiction in this District due to its business contacts
10 with the District, and a substantial portion of the complained of conduct
11 occurred in this District.

12
13 **FACTUAL ALLEGATIONS:**

14 10. Plaintiff is a legally blind person and a member of a protected class
15 under the ADA. Plaintiff is proficient with and uses SRS to access the internet
16 and read internet content on electronic devices.

17 11. Plaintiff cannot use electronic devices without the assistance of screen
18 reader software. (“SRS”).

19 12. Andretti Winery operates privileges, goods or services out of a physical
20 location in California. These services are open to the public, places of public
21 accommodation, and business establishments.

22 13. The Website is a nexus between Andretti Winery ’s customers and the
23 terrestrial based privileges, goods or services offered by Andretti Winery.

24 14. The Andretti Winery offers websites and digital booking as some of the
25 facilities, privileges, and advantages offered by Defendants to patrons of the
26 Andretti Winery in connection with their patronage at the Andretti Winery.

27 15. Among the services offered include: details about the wines and the
28 Andretti Winery itself, location and contact information; Andretti Winery

1 policies; information about wines on sale, deals and promotions without any
2 ambiguity as to the amenities that would be available to the patron.

3 16. Plaintiff was a prospective customer who wished to access Defendant's
4 goods and services of the Andretti Winery.

5 17. Plaintiff visited the Website in March 2021 and August 2021 with the
6 intent to get information about wine tasting and purchasing.

7 18. When Plaintiff attempted to navigate the Website, Plaintiff encountered
8 numerous accessibility design faults that prevented him from navigating the
9 site successfully using SRS. Investigation into his experience revealed barriers,
10 including, but not limited to:

- 11 a. Images on the website lack a text equivalent readable by
12 SRS.
- 13 b. The website contains form elements that are not identified
14 with functional text readable by SRS.
- 15 c. The visualization of the webpage contains impermissibly
16 low contrast enabling differentiation of background and
17 foreground elements.

18 19. These inaccessible elements rendered the ostensibly "accessible"
19 elements inaccessible as a result of difficulty and confusion navigating the
20 numerous inaccessible elements.

21 20. Currently, the defendants either fail to provide an accessible website or
22 Defendants have failed to maintain in working and useable conditions those
23 website features required to provide ready access to persons with disabilities.

24 21. Despite multiple attempts to access the Website using Plaintiff's
25 electronic device, Plaintiff has been denied the full use and enjoyment of the
26 facilities, goods and services offered by Defendants as a result of the
27 accessibility barriers on the Website.

28 22. Plaintiff personally encountered accessibility barriers and has actual

1 knowledge of them.

2 23. By failing to provide an accessible website, the defendants denied
3 Plaintiff full and equal access to the facilities privileges or advantages offered
4 to their customers.

5 24. Plaintiff has been deterred from returning to the Website as a result of
6 these prior experiences.

7 25. The failure to provide accessible facilities created difficulty and
8 discomfort for the Plaintiff.

9 26. If the website had been constructed equally accessible to all individuals,
10 Plaintiff would have been able to navigate the Website and find information on
11 houses on sale.

12 27. Additionally, Plaintiff is a tester in this litigation and seeks future
13 compliance with all federal and state laws. Plaintiff will return to the Website
14 to avail himself of its goods and/or services and to determine compliance with
15 the disability access laws once it is represented to him that the Andretti Winery
16 and Website are accessible.

17 28. Plaintiff is currently deterred from doing so because of Plaintiff's
18 knowledge of the existing barriers and uncertainty about the existence of yet
19 other barriers on the Website. If the barriers are not removed, Plaintiff will
20 face unlawful and discriminatory barriers again.

21 29. The barriers identified above violate easily accessible, well-established
22 industry standard guidelines for making websites accessible to people with
23 visual-impairments that use SRS to access websites. Given the prevalence of
24 websites that have implemented these standards and created accessible
25 websites, it is readily achievable to construct an accessible website without
26 undue burden on the Andretti Winery or a fundamental alteration of the
27 purpose of the Website.

28 30. Compliance with W3C Web Content Accessibility Guidelines

1 (“WCAG”) 2.0 AA standards are a viable remedy for these deficiencies and a
2 standard that has been adopted by California courts for website accessibility.

3 31. It’s been established that failure to remove these inaccessible conditions
4 violates the ADA and California law and requiring compliance with industry
5 access standards is a remedy available to the plaintiff.

6 32. The Website was intentionally designed, and based on information and
7 belief, it is the Defendants’, policy and practice to deny Plaintiff access to the
8 Website, and as a result, denies the goods and services that are otherwise
9 available to patrons of the Andretti Winery.

10 33. Due to the failure to construct and operate the website in line with
11 industry standards, Plaintiff has been denied equal access to Defendant’s
12 Andretti Winery and the various goods, services, privileges, opportunities and
13 benefits offered to the public by the Andretti Winery.

14 34. Given the nature of the barriers and violations alleged herein, the
15 plaintiff alleges, on information and belief, that there are other violations and
16 barriers on the website, and/or at the Andretti Winery , that relate to his
17 disability. In addition to the barriers he personally encountered, Plaintiff
18 intends to seek removal of all barriers on the Website that relate to his
19 disability. See *Doran v. 7-Eleven* (9th Cir. 2008) 524 F.3d 1034 (holding that
20 once a plaintiff encounters one barrier, they can sue to have all barriers that
21 relate to their disability removed regardless of whether they personally
22 encountered the barrier).

23 35. Plaintiff will amend the complaint, to provide further notice regarding
24 the scope of the additional demanded remediation in the event additional
25 barriers are uncovered through discovery. However, please be on notice that
26 the plaintiff seeks to have all barriers related to his disability remedied.

27
28 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**

1 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
2 Defendants.) (42 U.S.C. section 12101, et seq.)

3 36. Plaintiff re-pleads and incorporates by reference, as if fully set forth
4 again herein, the allegations contained in all prior paragraphs of this
5 complaint. The Andretti Winery is a public accommodation with the
6 definition of Title III of the ADA, 42 USC § 12181.

7 37. The website provided by the Defendant is a service, privilege or
8 advantage and extension of Andretti Winery physical presence and terrestrial
9 services.

10 38. When a business provides services such as a website, it must provide an
11 accessible website.

12 39. Here, an accessible website has not been provided. A failure to provide
13 an accessible website is unlawful discrimination against persons with
14 disabilities.

15 40. Under the ADA, it is an act of discrimination to fail to ensure that the
16 privileges, advantages, accommodations, facilities, goods and services of any
17 place of public accommodation is offered on a full and equal basis by anyone
18 who owns, leases, or operates a place of public accommodation. *See*: 42 U.S.C.
19 § 12182(a). Discrimination is defined, inter alia, as follows: “A failure to make
20 reasonable modifications in policies, practices, or procedures, when such
21 modifications are necessary to afford goods, services, facilities, privileges,
22 advantages, or accommodations to individuals with disabilities, unless the
23 accommodation would work a fundamental alteration of those services and
24 facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).”

25 41. Here, the failure to ensure that the accessible facilities were available
26 and ready to be used by the plaintiff is a violation of the law.

27 42. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
28 set forth and incorporated therein, Plaintiff requests relief as set forth below.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

43. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishment of every kind whatsoever within the jurisdiction of the State of California. Cal. Civ. Code § 51(b).

44. The Unruh Act provides that a violation of the ADA is a violation of the Unruh Act. *Cal. Civ. Code* § 51(f).

45. Defendants’ acts and omissions, as herein alleged, have violated the Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s rights to full and equal use of the accommodations, advantages, facilities, privileges, or services offered.

46. Because the violation of the Unruh Civil Rights Act resulted in difficulty, discomfort or embarrassment for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. *Cal. Civ. Code* § 55.56(a)-(c).

47. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights set forth and incorporated therein, Plaintiff requests relief as set forth below.

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1 1. A Declaratory Judgment that at the commencement of this action
2 Defendants were in violation of the requirements of the ADA due to
3 Defendants' failures to take action to ensure that its Website was fully
4 accessible to and independently usable by blind and visually-impaired
5 individuals.

6 2. For equitable nominal damages for violation of civil rights. See
7 Uzuegbunam v. Preczewski, 141 S.Ct. 792 (2021) and any other equitable
8 relief the Court finds appropriate.

9 3. Pursuant to 42 U.S.C § 12181, a preliminary and permanent injunction
10 enjoining Defendants from violating the ADA with respect to its Website.

11 4. Damages under the Unruh Civil Rights Act § 51², which provides for
12 actual damages and a statutory minimum of \$4,000 for each offense.

13 5. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
14 to 42 U.S.C. § 12205; and *Cal. Civ. Code* § 52.

15
16 Dated: October 12, 2021

CENTER FOR DISABILITY ACCESS

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By: _____

Russell Handy, Esq.
Attorney for Plaintiff

27 ² Note: the plaintiff is not invoking section 55 of the California Civil Code and
28 is not seeking injunctive relief under the Disabled Persons Act at all.